CHAN CHEE CHIU & ANOR v. DIRECTOR GENERAL OF INSOLVENCY & ANOR

HIGH COURT MALAYA, KUALA LUMPUR
SAHERAN SUHENDRAN JC
[POST-BANKRUPTCY NO: WA-29PB-359-03-2024
& IN THE MATTER OF BANKRUPTCY NO: 29-197-2010]
9 JANUARY 2025

Abstract – *In an insolvent administration, the estate, whether of an individual or a corporation, ought to be fully distributed to the creditors before being returned to the insolvent. In this case, given the insolvency of the judgment debtor, these assets, in substance, belong 'beneficially' to the creditors. It is only proper for the creditors that the discharge of the judgment debtor be suspended for another two years under s. 33B(4) of the Insolvency Act 1967 to allow more funds to be paid to the judgment debtor estate, thus increasing the returns to creditors.*

BANKRUPTCY: *Discharge – Suspension of – Whether circumstances arose justifying discharge of bankrupt – Whether judgment debtor's estate must still be administered as there were dividends to be received – Whether detrimental to judgment creditors if judgment debtor unconditionally discharged – Whether suspension of issuance of certificate of discharge ought to be imposed – Whether proper for discharge of judgment debtor to be suspended for two years – Insolvency Act 1967, ss. 33A(1) & 33B(4)*

BANKRUPTCY: *Discharge – Discharge of bankrupt – Proceedings – Locus standi – Judgment debtor's right to be notified and to participate in discharge proceedings – Whether proceedings directly affected judgment debtor's legal and financial interests – Insolvency Act 1967, ss. 33A(1), 33B(4), (5) & 38(1)(a)*

These grounds of judgment dealt with an application under s. 33B(4) of the Insolvency Act 1967 ('IA') to prevent the Director General of Insolvency ('DGI') from discharging the bankruptcy of a judgment debtor ('JD') under s. 33A(1). Chan Wing was the late father of the JD and the estate of Chan Wing was one of the creditors of the JD. The judgment creditors ('JC') were the joint trustees of the estate. The JD was declared bankrupt on an adjudication and receiving order made by the High Court. Since then, the administration of JD's bankruptcy and the JD's estate were managed by the DGI. In compliance with s. 33B, the DGI issued a notice to all creditors, including the JC, notifying that the DGI intended to issue a certificate of discharge under s. 33A, discharging the JD from bankruptcy. The DGI cited

two grounds for exercising his discretion to discharge the JD, being that (i): the administration of the JD's estate had been continuing for 13 years since 2011; and (ii) the JD was already 90 years old. The JC issued a notice of objection, contesting the DGI's decision to discharge the JD. The DGI rejected the notice of objection. The JC then filed encl. 1 under s. 33B(4). After hearing the parties, the Deputy Registrar made the Registrar's decision, allowing encl. 1 and ordering that the issuance of any certificate of discharge of the JD's bankruptcy by the DGI be suspended for a period of two years. Hence, the JD filed an appeal ('encl. 19').

Held (dismissing encl. 19):

(1) A judgment debtor is not a 'stranger' to proceedings involving his own bankruptcy, particularly where the judgment creditor seeks to challenge a discharge under s. 33A. Sections 33B(4) and (5) confirm the JD's right to be notified and to participate in his discharge proceedings. Furthermore, s. 38(1)(a) confirms that no sanction of the DGI is required for the JD to take action related to his own bankruptcy proceedings. These proceedings directly affected the JD's legal and financial interests. The JC could not seriously dispute the *locus* of the JD. (paras 15-18)

(2) The JD had received dividends from the estate since 2016. These dividends were paid by the estate into the JD's estate by directly paying such dividends to the DGI. These dividends amounted to SGD179,330 (approximately RM627,655). The JD stood to receive further dividends from the estate. This was not a case where the JD was unable to contribute to the JD's estate, as would be the case where there were no assets in estate. In such cases, the bankruptcy would be spent and its maintenance would serve no purpose other than to burden the Government. In those circumstances, the DGI would be justified in discharging a bankrupt. (paras 38-41)

(3) The DGI confirmed that creditors were owed at the least, a total of RM16,252,596.95; the balance of the assets in the JD's estate was RM500,409.19. There would be more assets in the form of dividends from the estate that would be received by the DGI which would be administered for the benefit of the creditors. The DGI had more administration to carry out. The bankruptcy was not spent. Thus, if the appeal was allowed and the suspension was lifted, then the anticipated future dividends from the estate would be paid to the JD directly and he would be free to use those assets as he thinks fit. The JD was desirous to retain the dividends payable by the estate for his own personal use. This would be at the expense and to the detriment of the creditors. (paras 44 & 45)

(4) Upon an unconditional discharge, the DGI would be divested of the assets of the JD and such assets would then be returned to the control of the JD to do as he pleases. To allow these payments in priority to his creditors would be an abuse within the case of *Asia Commercial Finance (M) Berhad v. Bassanio Teo Yang ('Bassanio Teo')*. In an insolvent administration, the estate, whether of an individual or a corporation, ought to be fully distributed to the creditors before being returned to the insolvent. Given the insolvency of the JD, these assets, in substance, belong 'beneficially' to the creditors. Thus, it was only proper for the creditors that the discharge of the JD was to be suspended for another two years under s. 33B(4) to allow more funds to be paid to the JD's estate thus increasing the returns to creditors. (paras 49-51)

(5) There was nothing to show whether the policy and purpose of ss. 33A and 33B would be offended if the suspension of the issuance of the certificate of discharge was to be imposed. Indeed, there was little or no evidence to determine whether the JD's debts were just incurred due to misfortune through no fault of the JD, which may trigger the policy behind the protection of these sanctions. Indeed, the admitted debts were large and amount to RM16,252,596.95 whilst the balance left in the JD estate was merely RM500,409.19. The total amount collected from the JD amounted to only RM8,300 as at January 2018. In summary, it was more detrimental to the JC and the creditors than to the JD if the JD were unconditionally discharged at this juncture. (paras 52-57)

Case(s) referred to:

Asia Commercial Finance (M) Bhd v. Bassanio Teo Yang [2009] 9 CLJ 413 HC ***(refd)***

Ber Chin Su Hin; ex parte Linggi Agriculture Sdn Bhd [2023] MLJU 2646 ***(refd)***

Dalam Perkara Lim Chai Oi; Ex p Affin Bank Bhd [2020] 1 CLJ 518 HC ***(refd)***

Datuk Bandar Kuala Lumpur v. Zain Azahari Zainal Abidin [1997] 2 CLJ 248 CA ***(refd)***

In Re: Badan Pengurusan Bersama Kondominium Lagenda [2017] CLJU 2174; [2017] 1 LNS 2174 HC ***(refd)***

Pravinchandra Doshi (T/A M/S P Doshi & Co) v. Ismail Syed Mohamed & Anor [1998] CLJU 367; [1998] 1 LNS 367 HC ***(refd)***

Re Benny Ong Swee Siang; Ex p United Overseas Bank (Malaysia) Bhd [2016] 3 CLJ 1001 HC ***(refd)***

Re Mohana Sundari M Subramaniam ex p United Prime Corporation Bhd [2004] 1 CLJ 624 HC ***(refd)***

Re Wolverhampton Steel & Iron Co Ltd And Others [1977] 3 All ER 467 ***(refd)***

Legislation referred to:
Insolvency Act 1967, ss. 33A(1), (3), 33B(1), (2), (4), (5), (2A)(f), 38(1)(a)

For the 1st plaintiff - Hoo Yee Huan; M/s Shook Lin & Bok
For the 2nd plaintiff - Franky Irwan Abdul Rashid; Insolvency Department, Kuala Lumpur
For the respondents - Muhammad Nasron Rashid & Nik Syahirah Mohd Sani; M/s Basharuddin Iskandar

Reported by Suhainah Wahiduddin

JUDGMENT

Saheran Suhendran JC:

[1] These grounds of judgment deal with an application under s. 33B(4) of the Insolvency Act 1967 ("IA") to prevent the Director General of Insolvency ("the DGI") from discharging the bankruptcy of a judgment debtor under s. 33A(1).

Introduction

[2] Chan Wing is the late father of the second respondent, Dr Mubarak Chan Chin Cheung ("the JD"). The estate of Chan Wing ("estate") is one of the creditors of the JD. The plaintiffs ("JC") are the joint trustees of the Estate. On 27 June 2013, the JC submitted a proof of debt in the JD's estate for RM147,461.95 ("POD").

[3] Pursuant to encl. 1 (filed by the JC), the learned Deputy Registrar ("Registrar") delivered a decision on 25 July 2024 ("Registrar's decision" in encl. 20). The Registrar's decision prohibited the DGI from issuing a certificate discharging the JD from bankruptcy for a period of two years from 5 July 2024.

[4] On 19 July 2024, the JD appealed (encl. 19) the Registrar's decision. Clearly, the JD supports the decision of the DGI to discharge, but wanted the condition of the two-year suspension lifted.

[5] The DGI did not appeal the Registrar's decision.

[6] References to sections of an Act are with reference to the IA, save where the context provides otherwise. The cause papers filed herein leading to the appeal before me (encl. 19) are as follows.

Document	Encl No.
Notice of Application dated 26.3.2024 ("NOA")	1
Affidavit in Support affirmed by the JC on 19.3.2024 ("AIS")	2
The DGI Affidavit in Reply affirmed by Zulmazlinawati binti Hussin on 4.4.2024	3
Affidavit in Support affirmed by the JC on 16.4.2024	4
Affidavit in Reply affirmed by the JD on 2.5.2024	5
Affidavit in Reply (2) affirmed by the JC on 9.5.2024	6
The JC's Written Submissions dated 24.5.2024	7
The JC's Bundle of Authorities	8
The DGI's Written Submissions dated 10.6.2024	9
The DGI's Bundle of Authorities	10
The JD's Written Submissions dated 11.6.2024	11
The JD's Bundle of Authorities	12
The JD's Written Submissions in Reply dated 25.6.2024	13
The JC's Written Submissions in Reply (to DGI's Written Submissions) dated 25.6.2024	14
The JC's Written Submissions in Reply (to JD's Written Submissions) dated 25.6.2024	15
The JC's Bundle of Authorities (2) (to DGI's Written Submissions)	16
The JC's Bundle of Authorities (3) (to JD's Written Submissions)	17
The Order dated 25 July 2024 reflecting the Registrar's Decision	20
The Notice of Appeal by the JD against the Registrar's Decision dated 18 July 2024	19

Background Facts

[7] The background facts are set out in paras. 5 to 12 of the JC's affidavit (encl. 2) in support of the JC's encl. 1. Briefly, they are as follows.

[8] The JD was declared bankrupt on an adjudication and receiving order dated 11 February 2011 made by the KL High Court.

[9] Since then, the administration of JD's bankruptcy and the JD's estate was managed by the DGI.

The DGI Decides To Discharge

[10] In compliance with s. 33B, the DGI on 18 May 2023, issued a notice to all creditors including the JC. The notice notified the JC that the DGI intended to issue a certificate of discharge under s. 33A, discharging the JD from bankruptcy.

[11] On 21 August 2023, the JC issued a notice of objection contesting the DGI's decision to discharge the JD. By a letter dated 27 February 2024, JC's solicitors were informed by the DGI that its notice of objection was rejected.

[12] On 26 March 2024, the JC then filed (encl. 1) under s. 33B(4).

[13] After hearing the parties, the Deputy Registrar made the Registrar's decision, allowing encl. 1 and ordering that the issuance of any certificate of discharge of the JD's bankruptcy by the DGI be suspended for a period of two years from 5 July 2024.

[14] Hence, the JD filed an appeal (encl. 19), which came before me.

Locus Standi

[15] At the outset, I should deal with an issue dealt with by the JD. It was the *locus standi* of the JD.

[16] I agree that the JD has the *locus* to bring this appeal. In *Dalam Perkara Lim Chai Oi; Ex p Affin Bank Bhd* [2020] 1 CLJ 518, it was made clear that a judgment debtor is not a "stranger" to proceedings involving his own bankruptcy, particularly where the judgment creditor seeks to challenge a discharge under s. 33A.

[17] I also agree that s. 33B(4) and (5) confirm the JD's right to be notified and to participate in his discharge proceedings. Furthermore, s. 38(1)(a) confirms that no sanction of the DGI is required for the JD to take action related to his own bankruptcy proceedings.

[18] These proceedings directly affect the JD's legal and financial interests. I do not believe that the JC can seriously dispute the *locus* of the JD.

The Legislative Structure And Policy Of The Discharge Provisions

[19] The procedure for a discharge adopted by the JD was pursuant to ss. 33A and 33B.

[20] The purpose of ss. 33A and 33B was to provide bankrupts further relief from the stringent effects of bankruptcy. In *Re Mohana Sundari M Subramaniam ex p United Prime Corporation Bhd* [2004] 1 CLJ 624; [2004] 5 MLJ 227, it was noted:

> 8. A further point which goes to support the argument as aforesaid is the provision of the new s. 33A of the Act. This new section allows a bankrupt to apply to the Official Assignee directly to obtain his discharge after only

five years of being a bankrupt. This new section in my view is designed and enacted by Parliament in furtherance of their original intention to afford a bankrupt some relief.

[21] It also appears that there are further proposed amendments to relax the bankruptcy restrictions. But that is for another time.

[22] Sections 33A and 33B are clear and self-evident. They work in this way.

[23] The bankrupt will first make an application directly to the DGI for his discharge. Under s. 33A(1), the DGI has the discretion to discharge the bankrupt by issuing a certificate of discharge. However, before issuing the certificate, the DGI must give notice of his intention to issue a certificate under s. 33B(1) to all creditors who have filed a proof of debt. Such creditors will have a right to file a notice of objection under s. 33B(2) and thereafter, if rejected, to file an application in court under s. 33B(4).

[24] Under this s. 33A/33B process, it is important to note that if the court disagrees with the DGI's decision to issue the certificate, the only power that is vested in the court is to make an order that the DGI shall not issue a certificate of discharge for a period not exceeding two years. There is no power for the court to otherwise reverse or modify the DGI's decision, see *Asia Commercial Finance (M) Bhd v. Bassanio Teo Yang* [2009] 9 CLJ 413; [2009] MLJU 313 ("*Bassanio Teo*").

The Three Options To Discharge

[25] The ss. 33A/33B process is just one of the options available for obtaining a discharge. The three options under the IA was explained in *Bassanio Teo* (*supra*).

[26] The first two were explained, thus:

> Under the scheme of the Bankruptcy Act 1976, apart from a scheme of composition, there are **three routes** a bankrupt can avail himself to secure a discharge from bankruptcy. Under **s. 105(1)** he could apply to annul the bankruptcy on the ground that all the debts had been paid in full or on the ground that the adjudication order should not have been made in the first place. The **second** method is for the bankrupt to approach the court under s. 33(1) to seek a discharge from bankruptcy. Under s. 33(1), it is mandatory for the court to consider the conduct of the bankrupt during his bankruptcy vide a report from the DGI. The report constitutes prima facie evidence of the statements therein contained by virtue of sub-s. 8. The guidelines for discharge are given in the section itself and under case law (see *Re Mohana Sundari d/o M Subramaniam ex p United Prime Corp. Bhd* [2004] 1 CLJ 624. Section 33 seems to list out what conduct does not justify a discharge from bankruptcy rather than identify the converse of it. If the bankrupt had committed any of the offences listed under subsection (4), the court shall not, unless there are special reasons, give

him a discharge. In the alternative the court may suspend the operation of the order until a dividend of not less than fifty per centum has been paid to the creditors. In addition if there is proof of the facts listed in sub-subsection (6), the court shall:

(a) refuse the order; or

(b) suspend the operation of the order for a specified time; or

(c) suspend the operation of the order until a dividend of not less than fifty per centum has been paid to the creditors; or

(d) grant an order of discharge subject to such conditions as aforesaid.

The facts listed under subsection (6) are a long list of activities that should not be indulged in by a bankrupt such as trading in the knowledge that he is insolvent, contracting debts that cannot be repaid etc. It also includes a list of circumstances preceding the bankruptcy that shows misconduct on the part of the bankrupt which brought about or caused the bankruptcy such as omitting to maintain account books for purpose of business dealings, extravagance in living, recklessness, gambling, want of reasonable care in business etc.

(emphasis added)

[27] The third option is under s. 33A. The court in *Bassanio Teo* (*supra*) continued:

The bankrupt in the instant case, had taken a **third route** to release himself from the shackles of bankruptcy, *ie*, through s. 33A which was inserted in 2003 by Parliament. In *Re Mohana Sundari d/o M Subramaniam ex p United Prime Corp Bhd*, Zulkefli Ahmad Makinudin J (as he then was) quoted with approval the following passage from the judgment of Warren Khoo J in the case of *Re Siah Ooi Choe, exp. Hongkong and Shanghai Banking Corporation* [1998] SLR 903 which discussed the philosophy behind the law that allowed bankrupts who have not settled their debt to earn a discharge:

> the Act was designed to meet *two* major *conflicting concerns. One stemmed from the fact that many an individual businessman become insolvent not through any fault, moral or otherwise, but through just being caught at the wrong turning of the economic cycle. It would be in the interests of society that people who had become bankrupt in such circumstances should be given a second chance in life … The other concern* was that, without proper safeguards, people who have used dishonest and fraudulent methods in conducting their business affairs to the detriment of their creditors might get an undeserved advantage from their own wrong doings.

Zulkefli Ahmad Makinudin J then commented that the new of provision of s. 33A which conferred the power on the DGI to give discharge to a bankrupt after being one for five years is another provision:

> "designed and enacted by Parliament in furtherance of their original intention to afford a bankrupt some relief.

> Very interestingly, unlike s. 33 under which a bankrupt seeks reprieve from the bankruptcy, s. 33A *does not provide any guideline for the DGI* to consider in granting a discharge. The only precondition is that five years must have elapsed since the commencement of the bankruptcy. Learned counsel for the creditor in this case has urged the court to prohibit the DGI from granting a discharge on the grounds that I enumerated earlier.
>
> (emphasis added)

The DGI's Discretion

[28] The parties appear to be in agreement as to the principles applicable to the exercise of discretion by the DGI to issue a certificate of discharge under s. 33A. The principles are as below.

(i) the exercise of discretion is subject to s. 33B and must be made judiciously depending on the circumstances. In *Re Benny Ong Swee Siang; Ex p United Overseas Bank (Malaysia) Bhd* [2016] 3 CLJ 1001, it was held at para. 19:

> [19] From my reading of ss. 33A and 33B of the Bankruptcy Act 1967, the DGI does not have the absolute discretion to issue the certificate of discharge. *The DGI's exercise of the discretion is plainly subjected to the provisions in s. 33B. It must be made judiciously depending on the circumstances of each case*. In the Supreme Court case of *Savrimuthu Sinnapan v. PP* [1987] 1 CLJ 368; [1987] CLJ (Rep) 322; [1987] 2 MLJ 173, Salleh Abas LP held that *public interest, reason and justice demand that any statutory power must be exercised reasonably and with due consideration*.
>
> (emphasis added)

(ii) a person in whom any power is vested by Parliament (in this case, the DGI) is akin to a trustee and the said person is under an obligation to exercise it reasonably and in accordance with the terms of the relevant statute that confers the power. It is not an uncontrolled discretion. *Datuk Bandar Kuala Lumpur v. Zain Azahari Zainal Abidin* [1997] 2 CLJ 248, at p. 268, followed the judgment of Raja Azlan Shah Ag CJ (Malaya) (as he then was). Gopal Sri Ram JCA said:

> Raja Azlan Shah Ag CJ (Malaya) explained the principle and its raison d'etre in words that are accorded respect that is usually reserved to statutory formulae found in an Act of Parliament:
>
> > On principle and authority, the discretionary power to impose such conditions 'as they think fit' is **not an uncontrolled discretion** to impose whatever conditions they like. In exercising their discretion, the planning authorities must, to paraphrase the words of Lord Greene MR in *Associated Provincial Picture Houses Ltd. v. Wednesbury Corpn*. have regard to all relevant considerations and disregard all improper consideration, and they must produce a result which does not offend against common sense; or to repeat Lord Denning MR's words in *Pyx*

> *Granite Co. Ltd. v Ministry of Housing and Local Government* [1958] 1 All ER 625, approved in *Fawcett Properties Ltd. v Buckingham County Council* [1960] 3 All ER 503, the conditions to be valid must fairly and reasonably relate to the permitted development. The dictum of Lord Denning MR has been frequently quoted and followed in these matters. ...
>
> Applying the principles stated above, what is the effect of the condition under consideration? I read the affidavit of the Chairman, Land Executive Committee as claiming an **unfettered discretion** to grant or reject any application under s. 124 or impose such conditions or other requirements as the committee think fit. **I cannot subscribe to this proposition** for a moment. Unfettered discretion is a contradiction in terms. My understanding of the authorities in these cases, and in particular the case of *Pyx Granite* (*ante*) and its progeny compel me to reject it and to uphold the decision of the learned Judge. It does not seem to be realised that this argument is fallacious. Every legal power must have legal limits, otherwise there is dictatorship. In particular, it is a stringent requirement that a discretion should be exercised for a proper purpose, and that it should not be exercised unreasonably. In other words, every discretion cannot be free from legal restraint; where it is wrongly exercised, it becomes the duty of the Courts to intervene. The Courts are the only defence of the liberty of the subject against departmental aggression.
>
> (emphasis added)

[29] Based on the above, it cannot be disputed that the DGI's discretion in issuing a certificate of discharge is not absolute and unfettered. It must be exercised based on valid and legitimate grounds.

[30] The court's power to interfere with the DGA's discretion under s. 33A is limited. In *Bassanio Teo* (*supra*), it was held:

> In my opinion, in reviewing the reasons for discharge under s. 33A, the court should, save for exceptional reasons, be slow to substitute its own views as to how that discretion should be exercised as that duty has been entrusted to the DGI by Parliament. The court should be mindful that this is not an application under s. 33 where the court has the sole power to determine whether a bankrupt should be discharged. The power granted under s. 33B is only the power to delay the discharge of a bankrupt. The representative of the DGI in the instant case has deposed that the respondent has diligently complied with the order to pay RM50 for eight years. He further deposed that the respondent **has no assets** to be realised. **He added that to continue with the administration of the bankruptcy would only burden the respondent as well as the government**. The outstanding amount is still a big sum as the payment of RM50 a month would never be able to catch up with the accretion of interests on a sum of over RM80,000. Therefore, if the situation were allowed to remain as it were, the bankruptcy would continue indefinitely as feared by the DGI.
>
> (emphasis added)

[31] His Lordship continued:

> In the premises, I am of the view that the power of the court to prohibit the DGI from issuing the certificate to discharge the respondent for a period of two years should only be exercised in **clear cut cases of abuse of s. 33A**. Guidance could be sought from s. 33(6) but the court should resist the temptation to apply them stringently as that would tantamount to exercising original discretion under s. 33(1). Clear cut cases of abuse would be where the bankrupt had obtained huge loans with no intention of paying them back or where the bankrupt is maintaining an extravagant lifestyle beyond his reported income or where he has continued to be reckless in his financial affairs. I note that even if the above facts were proved by the creditor, **the court can only delay the discharge of the bankrupt by two years as Parliament in its wisdom had granted the power to discharge a bankrupt to the DGI**. However, I hasten to add that in this case, from the affidavit of the representative of the DGI, there is no reason to infer that there has been any abuse of s. 33A. Therefore there is no reason for me to interfere with the exercise of the statutory discretion which has been vested in the DGI by delaying the discharge of the bankrupt for a period two years.
>
> (emphasis added)

[32] It is clear that the discretion of the DGI should not be interfered with unless there is an abuse of the discretion.

[33] Further, in the event it is found that the DGI's decision was an abuse or improper, the only remedy under the s. 33A/33B regime is to grant a suspension of the issuance of the certificate of discharge for two years.

DGI – Exercise Of Discretion And Abuse

[34] The Registrar's decision in dealing with the appeal in (encl. 19) included making the order that the issuance of the certificate of discharge be suspended for two years. Although the DGI did not file a report, the DGI filed an affidavit explaining his decision (encl. 3). The DGI only cited two grounds for exercising his discretion to discharge the JD (encl. 3, para. 21), being that:

(i) the administration of the JD's estate had been continuing for 13 years since 2011; and

(ii) the JD is already 90 years old.

[35] The DGI also states (encl. 3, para. 21) that in deciding whether to grant a discharge of the bankruptcy, the DGI must balance the interests of the JD against the other creditors of the JD's estate.

[36] In short, the JC submitted that a major piece of evidence was not considered by the DGI.

[37] It is this.

The JD's Estate Must Still Be Administered As There Are Dividends To Be Received

[38] The JD has received dividends from the estate since 2016. These dividends were paid by the estate into the JD estate by directly paying such dividends to the DGI. These dividends amount to SGD179,330 (approximately RM627,655), see the JC's affidavit (encl. 2) at paras. 15 to 19. The bankruptcy is therefore not spent as it was in *Bassanio Teo* (*supra*) at para. 30 above.

[39] Indeed, the JD stands to receive further dividends from the estate. For 2022, the dividend has been determined to be SGD35,950 (approximately RM125,825). The dividends for 2023 have not as yet been determined by the estate, see paras. 16 to 18 of encl. 2.

[40] Therefore, a further sum of at least RM125,825 will be paid into the JD estate.

[41] This is not a case where the JD is unable to contribute to the JD estate, as would be the case where there are no assets in estate. In such cases, the bankruptcy would be spent and its maintenance would serve no purpose other than to burden the Government. In those circumstances, the DGI would be justified in discharging a bankrupt.

[42] This was the case in *Bassanio Teo* (*supra*) where the court dismissed an appeal by the judgment creditor against the decision of the Registrar refusing to suspend granting the certificate of discharge. The court noted (as emphasised in para. 30 above):

> The representative of the DGI in the instant case has deposed that the respondent has diligently complied with the order to pay RM50 for eight years. He further deposed that the respondent has **no assets to be realised**. He added that to continue with the administration of the bankruptcy would only burden the respondent as well as the government. The outstanding amount is still a big sum as the payment of RM50 a month would never be able to catch up with the accretion of interests on a sum of over RM80,000. Therefore, if the situation were allowed to remain as it were, the bankruptcy would continue indefinitely as feared by the DGI.
>
> (emphasis added)

[43] The decision of the DGI to discharge was justified.

[44] In our case, the facts are wholly different. The DGI confirms (at encl. 3 paras. 13 and 19) that creditors are owed at the least, a total of RM16,252,596.95; the balance of the assets in the JD's estate is RM500,409.19. There will be more assets in the form of dividends from the Estate that will be received by the DGI which would be administered for the benefit of the creditors. The DGI has more administration to carry out. The bankruptcy is not spent.

[45] The JC stresses that if the appeal is allowed and the suspension is lifted, then the anticipated future dividends from the estate will be paid to the JD directly and he would be free to use those assets as he thinks fit. Based on the JD's averments in encl. 5, the JD is desirous to retain the dividends payable by the estate for his own personal use. This would be at the expense and to the detriment of the creditors.

[46] The JC is correct.

[47] First, after further research, *In Re: Badan Pengurusan Bersama Kondominium Lagenda* [2017] CLJU 2174; [2017] 1 LNS 2174; [2017] MLJU 2396 establishes the effect of the discharge. At para. 33, Vazeer Alam J (as he then was), held, following Jeffrey Tan J (as he then was) in *Pravinchandra Doshi (T/A M/S P Doshi & Co) v. Ismail Syed Mohamed & Anor* [1998] CLJU 367; [1998] 1 LNS 367; [1999] 1 MLJ 35 at 42) that:

> [33] I am in complete agreement with the observations of my learned brother Jeffry Tan J (as he then was) as to **the effect of a discharge of bankruptcy**. Once an absolute discharge is given, the property of the discharged bankrupt, except for those caught under ss. 35(1)(a) and 35A of the Bankruptcy Act 1967, divests from the Director General of Insolvency and **the discharged bankrupt is free to deal with these property**, The Director General of Insolvency has no reason to hold on to the estate of the discharged bankrupt, especially when all of the bankrupt's debts had been settled.
>
> (emphasis added)

[48] The learned judge held that *Re Wolverhampton Steel & Iron Co Ltd And Others* [1977] 3 All ER 467 CA, which held that upon a discharge of the bankruptcy without setting aside of the receiving order did not divest the trustee of bankruptcy of the assets of judgment debtor. This means that despite the discharge of the bankruptcy, the assets would remain vested in the DGI. It would follow that there would be no prejudice to the creditors as the DGI would still administer these residual assets for the benefit of the creditors.

[49] However, the court in *Jeuro Developments* held that the legislative provisions in the UK were different. And that in Malaysia, upon an unconditional discharge, the DGI would be divested of the assets of the JD and such assets will then be returned to the control of the JD to do as he pleases.

[50] Secondly, to allow these payments in priority to his creditors (encl. 23 para. 44) would, in my judgment, be an abuse within *Bossaino Teo* (*supra*) at para. 29 above. This is because in an insolvent administration, the estate, whether of an individual or a corporation ought to be fully distributed to the creditors before being returned to the insolvent. This is because given the

A insolvency of the JD, these assets, in substance, belong 'beneficially' to the creditors. This concept has now been accepted in numerous cases in company law.

[51] Thus, it is only proper for the creditors that the discharge of the JD is to be suspended for another two years under s. 33B(4) to allow more funds B to be paid to the JD estate thus, increasing the returns to creditors.

[52] I am acutely aware that the JD is aged and is 90 years. However, there is nothing to show whether the policy and purpose of ss. 33A and 33B would be offended if the suspension of the issuance of the certificate of discharge C was to be imposed. Indeed, there is little or no evidence to determine whether the JD's debts were just incurred due to misfortune through no fault of the JD, which may trigger the policy behind the protection of these sections, see para. 27 above.

[53] Indeed, the admitted debts are large and amount to RM16,252,596.95 D whilst the balance left in the JD estate is merely RM500,409.19. Even the repayment by the JD of RM100 per month was breached (encl. 3) para. 20.

[54] The total amount collected from the JD amounts to only RM8,300 as of January 2018 (encl. 3, para. 20).

E **[55]** In summary, it is more detrimental to the JC and the creditors than to the JD if the JD were unconditionally discharged at this juncture.

[56] I agree that the appeal be dismissed.

[57] One last point taken by the JC. The JC also attacks the conduct of the DGI in not administering the JD estate properly for the benefit of the F creditors.

[58] The DGI had failed to furnish the creditors with any information whatsoever regarding the administration of the JD's estate. The creditors complain that they have no knowledge of the assets of the JD, what was the amount that had been called in, what was the repayment scheme imposed by G the DGI. Further, it also appears that no dividends have been paid out.

[59] Effectively, this is a complaint that the administration of the JD's estate was improper. The proper remedy would be for the removal and/or replacement of the DGI, a remedy that is not available under a s. 33B(4) H application. I will say nothing further on this complaint.

[60] There are two matters that are worth noting.

I

Exemption Under Section 33B(2A)

[61] First, is the exemption under sub-s. 33B(2A)(f), which came into force on 6 October 2023 after encl. 1 was filed on 26 March 2024. It must remain in doubt whether the section actually applies. The section lists specific categories of bankrupts against whom no objections may be made. Sub-section 33B(2A)(f) provides that a bankrupt aged 70 years and above may be exempt from objection if, in the opinion of the DGI, he is incapable of contributing to the administration of his estate.

[62] Even if the section applies, which I seriously doubt (see *Ber Chin Su Hin; ex parte Linggi Agriculture Sdn Bhd* [2023] MLJU 2646 at para. 18, per the prolific Arun Noval Dass TP), the affidavit filed on behalf of the DGI (encl. 3) made no statement that the DGI formed the opinion that the JD is incapable of contributing to the JD estate. In any event, it would be difficult to arrive at this conclusion given that the DGI has been receiving dividends from the estate on behalf of the JD, with the JD having a real role to play.

Advertisement

[63] Secondly, it is claimed that the DGI failed to advertise the notice to creditors dated 18 May 2023 (exh. "C-3") in a local newspaper in breach of s. 33A. This, it is said, constitutes procedural non-compliance and impropriety.

[64] In my judgment, the obligation under s. 33A(3) does not arise until the discharge certificate under s. 33A(1) is issued. No such certificate has been issued and accordingly, the obligation to advertise has not arisen. No procedural breach has occurred.

Conclusion

[65] I note that the court will be slow to interfere with the DGI's discretion unless there is clear evidence of abuse. In this case, to allow the bankrupt to have free use of the assets of the JD estate when there are unpaid creditors is such an abuse.

[66] Accordingly, I dismissed the appeal in encl. 19 filed by the JD against the Registrar's decision.